

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1679.01
COMPLAINT INVESTIGATOR:	Jane Taylor-Holmes
DATE OF COMPLAINT:	January 26, 2001
DATE OF REPORT:	February 23, 2001
REQUEST FOR RECONSIDERATION:	yes (revisions to original report are underscored)
DATE OF CLOSURE:	April 27, 2001

COMPLAINT ISSUES:

Whether the Hamilton Southeastern Schools and the Hamilton-Boone-Madison Special Services violated:

511 IAC 7-19-1(g) and 511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "IEP") as written, specifically, failing to provide an auditory trainer.

During the course of the investigation, an additional issue was identified, which is:

Whether the Hamilton Southeastern Schools and the Hamilton-Boone-Madison Special Services violated:

511 IAC 7-19-1(g)(1) with regard to the school's alleged failure to develop an *IEP* in accordance with 511 IAC 7-27-6 for a student with a disability who was unilaterally enrolled by the parent in a private school.

FINDINGS OF FACT:

1. The student (the "Student") is seven years old and attends kindergarten at a private school (the "Private School"). The Student is eligible for special education and related services as a student with a multiple handicap.
2. The *Case Conference Committee Report (CCC Report)* from the May 31, 2000 case conference committee (CCC) meeting indicates that the Student will be provided with an auditory trainer for a trial period. The "Permission for Placement" section on the following page lists the initiation date as August 17, 2000; however, no anticipated length, frequency, location, or duration of services is indicated. No IEP was completed at this meeting. The notes indicate that the CCC meeting was "suspended" and would be reconvened during the summer, as well as in August. There is no parental signature to indicate the parent's agreement with the CCC's recommendations.
3. The CCC met on August 16, 2000, and developed an IEP for the Student. The IEP is part of the single *CCC Report* document. The *CCC Report* indicates the CCC discussed a variety of least restrictive environment options available in the school corporation, but the parents rejected the school's proposed services, and decided to unilaterally enroll the Student in a private school. The *CCC Report* also contains a "Private School Service Plan" describing the services the school corporation will provide to the Student while attending the private school, including a trial period with

an auditory trainer. The "Permission for Placement" section of the *CCC Report* does not identify an initiation of services date and lists the anticipated duration date as May 31, 2000. Although the parent signed to indicate receipt and understanding of the Notice of Parent's Rights, the parent did not indicate whether she agreed with the CCC recommendations. The CCC adjourned with a plan to reconvene "once notes and options are provided to parents by school corporation." The parent enrolled the Student in the Private School on August 17, 2000.

4. The CCC reconvened on November 8, 2000. The November 8 *CCC Report* is a continuation of the *CCC Report* generated at the August 16 CCC meeting to which additional pages have been attached reflecting November 8 CCC discussions. The CCC reviewed the "Private School Service Plan" from the August 16 *CCC Report* and added a sixth service to the list. At the bottom of the page describing the "Private School Service Plan," the parents wrote: "We do not agree that the placement offered by [local school corporation] is the least restrictive environment. However, we do agree to accept the above services and evaluations." On the subsequent "Permission for Placement" page, however, the parents signed indicating lack of agreement with the school's proposed services and wrote that they do not agree the school corporation's proposed services will provide a free appropriate public education in the least restrictive environment. No initiation or duration of services dates are listed in the November 8 *CCC Report*.

5. The School originally provided the Student with an auditory trainer in June 2000 for the use during the summer. The parent returned the device at the end of the summer indicating it was non-functional. School staff made the following attempts to secure an auditory trainer for the student subsequent to the parents' written consent to the November 8, 2000 IEP:

<u>11-09-00</u>	<u>Contact with the student's private audiologist regarding the proper equipment.</u>
	<u>Request to PATINS for equipment.</u>
<u>11-14-00</u>	<u>Information received from private audiologist.</u>
	<u>Telephone call to Phonic Ear - left message.</u>
	<u>Telephone call to PATINS - left message.</u>
<u>11-17-00</u>	<u>Telephone call to Phonic Ear - left message.</u>
<u>11-21-00</u>	<u>Telephone call to Phonic Ear - left message.</u>
<u>12-04-00</u>	<u>Telephone call to PATINS - advised school was on a waiting list for the equipment.</u>
<u>12-05-00</u>	<u>Personal visit to PATINS to check on status of equipment.</u>
<u>01-16-01</u>	<u>Telephone call to PATINS - advised school to pick up equipment on 01-18-01.</u>
<u>01-17-01</u>	<u>Personal visit to PATINS to check on status of equipment.</u>
<u>01-18-01</u>	<u>Personal visit to PATINS to pick up equipment, but equipment was not available.</u>
<u>01-19-01</u>	<u>Telephone call from PATINS - advised school that they were in error about availability of equipment; equipment was currently out for repair.</u>
<u>01-25-01</u>	<u>Contact with another teacher from cooperative yielded two auditory trainers.</u>
<u>01-29-01</u>	<u>Equipment was delivered to the student at the private school.</u>
	<u>The auditory trainer provided by the School on January 29, 2001 ceased to function after approximately two weeks, at which time the parent notified the School that a new device was needed. On February 15, 2001, School personnel ordered a replacement auditory trainer. However, due to "a series of miscommunications," the device was not shipped until February 23, 2001, and was shipped directly to the parent.</u>

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 reflect that, although the CCC discussed the student's need for a trial period with an auditory trainer at CCC meetings convened in May, August, and November 2000, the parent did not provide written consent for the service until November 8, 2000. Finding of

Fact #5 indicates that the School made a number of efforts to secure the auditory trainer, but did not actually obtain the device until January 29, 2001. A school has a limited amount of time in which to make arrangements to implement a student's IEP. Although the school was working to obtain the device, the Student was initially without the identified service for approximately nine weeks, and then experienced another week's interruption while waiting on the replacement device. Therefore, violations of 511 IAC 7-19-1(g) and 511 IAC 7-27-7(a) occurred.

2. Findings of Fact #3 and #4 indicate that an *IEP* was written for the Student at the August 16, 2000 CCC meeting and is included as part of a single *CCC Report* document from both the August 16 and November 8, 2000 CCC meetings. Subsequent to the parent's rejection of the proposed services and advisement that the Student would be enrolled in private school, the CCC developed a "Private School Service Plan" that is included in the *CCC Report* along with the IEP. However, Finding of Fact #4 demonstrates that neither the "Private School Service Plan" nor the IEP components of the *CCC Report* include the projected dates for initiation or duration of services as required by 511 IAC 7-27-6(a)(5). Because this information was not included in the *CCC Report*, a violation of 511 IAC 7-19-1(g)(1) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Hamilton Southeastern Schools and the Hamilton-Boone-Madison Special Services Cooperative shall reconvene the Student's CCC meeting and determine the need for compensatory services for the time the Student was without the auditory trainer. Further, the CCC shall identify initiation and duration dates for services and include them in the *CCC Report* that results from the reconvened CCC meeting. **A copy of the *CCC Report* and *IEP* shall be submitted no later than April 27, 2001.**